

FRANK E. EVANS

IBLA 82-34

Decided November 17, 1981

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring a mining claim abandoned and void for failure to file a notice of location within 90 days of location.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment -- Mining Claims: Location -- Mining Claims: Recordation

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located on Federal land after Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location in the proper BLM office within 90 days after the date of location.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Federal Land Policy and Management Act of 1976: Rules and Regulations -- Mining Claims: Recordation

Pursuant to 43 CFR 3833.1-2(d), payment of a \$5 service fee must accompany the filing with BLM of each notice or certificate of mining location; otherwise, each unpaid filing shall be rejected.

3. Notice: Generally -- Regulations: Generally -- Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: Frank E. Evans, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Frank E. Evans appeals from the September 25, 1981, decision of the Nevada State Office, Bureau of Land Management (BLM), rejecting the filing of his notice of mining claim location. Evans located the "Vanandon" claim, N MC 219563, on June 17, 1981. He submitted the notice of location to BLM on August 17, 1981. Thirty days later, on September 16, 1981, 1 day after the expiration of the 90-day filing deadline established by statute and set out in 43 CFR 3833.1-2(b), BLM returned the notice of location with the invitation to comply with the regulatory requirement of payment of a one-time service fee of \$5 per claim. ^{1/} Within 4 days of receipt, on September 23, 1981, the 98th day after the date of location, Evans resubmitted the location notice with a check for \$5. BLM then issued the September 25, 1981, decision rejecting Evans' filing as tardy under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulations in 43 CFR 3833, and declaring the claim void under the conclusive presumption of abandonment imposed by 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

[1, 2] Section 314 of FLPMA and 43 CFR 3833.1-2(b) establish that the owner of an unpatented mining claim located on Federal land on or after October 22, 1976, must file a copy of the official record of the notice or certificate of location in the proper BLM office within 90 days after the date of location. Pursuant to 43 CFR 3833.1-2(d), the notice of location will not be accepted for recordation by BLM unless accompanied by the service fee. The issue to be resolved in this appeal is whether Evans' timely submission of the location notice without the service fee warrants an extension of time to cure the deficiency.

Evans does not contend that the service fee is unlawful, but only that he wasn't given proper opportunity to refile the location notice with the fee before the end of the 90-day period because, as he states, BLM held "our application forms beyond a time that would have made it possible for us to respond in time."

^{1/} Although section 314 of FLPMA makes no mention of the filing service fee, its payment is required by 43 CFR 3833.1-2(d), promulgated under authority of section 304 of FLPMA, 43 U.S.C. § 1734 (1976). One court, noting the provision in section 304 for "reasonable" fees, stated that "[t]he [\$5] filing fee, rather than being onerous and unlawful, is in reality modest and moderate. * * * [T]here is nothing wrong with the fee." Topaz Beryllium Co. v. United States, 479 F. Supp. 309, 316 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981).

[3] We regret BLM's inefficiency in handling filings like Evans', who, had he been promptly notified, could have resubmitted his filing before the deadline and been in full compliance with the law. Nevertheless, the entire responsibility for timely submitting the service fee, and the consequences of nonpayment, rest solely on the appellant, who is presumed to have known of this duly promulgated regulatory requirement. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Edward W. Kramer, 51 IBLA 294 (1980). BLM is not estopped from rejecting a late filing merely because it failed to notify a mining claimant of particular filing requirements. Vivian Sullivan Karlson, 60 IBLA 10 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Evans should have consulted the regulations for clarification of his responsibility.

This Board has consistently held that until the service fee is paid no recordation has occurred under section 314(b) of FLPMA. Edward J. Szyrkowski, Jr., 53 IBLA 310 (1981). The relevant statute and regulations make no provision for an extension or tolling of the 90-day filing deadline, and accordingly the consequences of Evans' noncompliance with the statute take effect. His claim is conclusively presumed abandoned and is declared void. Vivian Sullivan Karlson, supra. Evans may wish to consult with BLM about the possibility of relocating his claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

